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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 UNITED STATES OF AMERICA,

4 v.

24 Cr. 00481 (AS)

5 JAROL JAELE FABIO,

6 Plea

7 Defendant.

8 -----x

9 New York, N.Y.
10 August 13, 2024
11 4:00 p.m.

12 Before:

13 HON. ARUN SUBRAMANIAN,

U.S. District Judge

14 APPEARANCES

15 DAMIAN WILLIAMS

16 United States Attorney for the
17 Southern District of New York

BENJAMIN GIANFORTE

Assistant United States Attorney

18 LISA SCOLARI

Attorney for Defendant

O8DDFabP

(Case called)

THE DEPUTY CLERK: Can the parties state your appearances, please, starting with the government?

MR. GIANFORTI: Good afternoon, your Honor. Benjamin Gianforti for the government.

THE COURT: Good afternoon.

MS. SCOLARI: Good afternoon, your Honor. Lisa Scolari for Mr. Fabio, who is present.

THE COURT: Good afternoon, and good afternoon to you, Mr. Fabio.

THE DEFENDANT: Good afternoon.

THE COURT: All right. So we're here on the matter of *United States v. Fabio*.

Do we have a report from the government, where we are procedurally, and what we need to address today?

MR. GIANFORTI: Your Honor, this is intended to be a change of plea proceeding.

THE COURT: All right. I understand that there's a waiver of indictment; is that correct?

MR. GIANFORTI: There is indeed. It was executed earlier today.

THE COURT: Before we get to that, I did want to put on the record one thing. As Mr. Gianforti had communicated over email to the parties and to the Court, I do know Mr. Gianforti's wife Amber Garrison, who was I think my

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1 elementary school classmate, and I met Mr. Gianforti once in
2 Brooklyn I think about a year ago where our kids got together.
3 Mr. Gianforti helpfully made that disclosure. I wanted to make
4 sure that was on the record.

5 Ms. Scolari, if you have any questions or concerns
6 along those lines --

7 MS. SCOLARI: Your Honor, I appreciate it. I know the
8 Court would want to avoid any appearance of impropriety, so is
9 it fair to assume that there will not be any further social
10 interaction between the Court and Mr. Gianforti while this case
11 is pending?

12 THE COURT: That is correct.

13 MS. SCOLARI: Thank you.

14 THE COURT: With that, we will proceed.

15 So, Mr. Gianforti, I understand the order of
16 operations here is for a waiver of indictment, to then arraign
17 Mr. Fabio on the information, and then to enter and go through
18 the plea colloquy; is that correct?

19 MR. GIANFORTI: That's correct, your Honor. Thank
20 you.

21 THE COURT: Okay. Well, the way I'm going to do this,
22 and please let me know if you have any objections, I'm going to
23 go ahead and swear Mr. Fabio in, and then we'll go through the
24 appropriate steps.

25 Ms. Scolari, any issues with that?

O8DDFabP

1 MS. SCOLARI: No. That's fine, your Honor.

2 THE COURT: Okay. Mr. Hernandez, could you swear in
3 Mr. Fabio?

4 THE DEPUTY CLERK: Yes, your Honor.

5 (Defendant sworn.)

6 THE DEPUTY CLERK: Thank you. You may be seated.

7 THE COURT: Okay. Mr. Fabio, you're now under oath,
8 which means that if you answer any of my questions falsely, you
9 may be prosecuted for the separate crime of perjury.

10 Do you understand that?

11 THE DEFENDANT: Understood, your Honor.

12 THE COURT: So I'm going to ask you some questions
13 just to get started about your competence just to make sure you
14 understand what's going on, and then we can proceed with the
15 rest of the things we're planning to do today. Okay?

16 THE DEFENDANT: All right.

17 THE COURT: What is your full name?

18 THE DEFENDANT: Jarol Jael Fabio.

19 THE COURT: How old are you?

20 THE DEFENDANT: Thirty-seven.

21 THE COURT: How far did you go in school?

22 THE DEFENDANT: Undergrad.

23 THE COURT: Where at?

24 THE DEFENDANT: FIT, Fashion Institute of Technology.

25 THE COURT: Have you ever been treated or hospitalized

O8DDFabP

1 for any kind of mental illness?

2 THE DEFENDANT: No.

3 THE COURT: Are you now or have you recently been --

4 MS. SCOLARI: I'm sorry. If I could have a moment?

5 THE DEFENDANT: Oh, treated. I focused on the
6 hospitalization portion of it.

7 I am currently taking Lexapro. It's an antianxiety,
8 antidepression, and I've been going to therapy for over ten
9 years now, currently working with my current therapist.

10 THE COURT: To treat depression?

11 THE DEFENDANT: Yes. Depression, anxiety, and just
12 general life.

13 THE COURT: Life stuff?

14 THE DEFENDANT: Yes.

15 THE COURT: Is there anything in that depression,
16 anxiety, or life stuff that would make it hard for you to
17 understand what's happening in the courtroom today?

18 THE DEFENDANT: No, your Honor.

19 THE COURT: Has that made it difficult for you to
20 understand what's going on in this criminal case?

21 THE DEFENDANT: No, your Honor.

22 THE COURT: So you feel like you're fully able to
23 understand everything that's happening and all the advice that
24 you've been getting from Ms. Scolari?

25 THE DEFENDANT: Whatever I can't understand, I always

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1 consult with her and she's able to clarify for me.

2 THE COURT: Nothing in the treatment, the medication,
3 the Lexapro, that's not affecting how you think about this
4 criminal case in a way that might make it harder for you to
5 understand what's going on?

6 THE DEFENDANT: It's not affecting me, your Honor.

7 THE COURT: It doesn't affect you in terms of this
8 case. Okay. And I apologize for that. I asked you a compound
9 question which lawyers are not supposed to do. That was my
10 fault for asking a question that's not clear.

11 All right. Now, you mentioned that you were under
12 treatment, and other than the treatment for the depression and
13 anxiety and being prescribed Lexapro, anything else in terms of
14 treatment that I should be aware of that might affect your
15 mental state, the way you're feeling, that sort of thing?

16 THE DEFENDANT: No, your Honor.

17 THE COURT: All right. Have you ever been treated --
18 well, I'm going to strike the compound question.

19 Have you ever been treated for any type of addiction,
20 including drug or alcohol addiction?

21 THE DEFENDANT: I have not, your Honor.

22 THE COURT: Have you ever been hospitalized for
23 anything like that?

24 THE DEFENDANT: No.

25 THE COURT: Any kind of addiction issues?

O8DDFabP

1 THE DEFENDANT: No.

2 THE COURT: Have you ever taken any drugs, medicine,
3 pills, or alcohol, other than the Lexapro that you mentioned in
4 the past two days?

5 THE DEFENDANT: No, I have not.

6 THE COURT: Now, as to the Lexapro, I've sort of asked
7 you this before, but does the Lexapro kind of change your mood,
8 make it hard to really understand what's going on, or make you
9 groggy or anything like that?

10 THE DEFENDANT: No, it doesn't.

11 THE COURT: So you feel your mind is clear today?

12 THE DEFENDANT: Yes, your Honor.

13 THE COURT: All right. So let's proceed with the
14 waiver of indictment.

15 Now, do we have a waiver of indictment form?

16 MS. SCOLARI: Yes, but it has yet to be signed. I
17 understand the Court's preference is to sign it before your
18 Honor.

19 THE COURT: Yes.

20 MS. SCOLARI: Shall we do that now?

21 THE COURT: Let's do it right now.

22 MS. SCOLARI: I'm signing it to witness, which I
23 should not sign it -- sorry. How many copies would you like,
24 Mr. Hernandez?

25 THE DEPUTY CLERK: The Court only needs one signed

O8DDFabP

1 copy. I can make a copy for the parties if you need it.

2 MR. GIANFORTI: We have a couple extra.

3 MS. SCOLARI: No, we're all set.

4 Well, let me do the other form, because I started to
5 sign where the witness signed, and I should not have.

6 MR. GIANFORTI: I signed that one, too, right?

7 THE DEPUTY CLERK: Yes.

8 MR. GIANFORTI: Okay. Very good.

9 MS. SCOLARI: No. This is not the one you signed.

10 The waiver --

11 THE DEPUTY CLERK: Oh, I apologize.

12 MR. GIANFORTI: Sorry. It's my fault.

13 THE DEPUTY CLERK: Your Honor, let the record reflect
14 that I have signed the waiver of indictment as the witness.

15 THE COURT: Okay. I have before me a waiver of
16 indictment -- excuse me, Ms. Scolari.

17 MS. SCOLARI: Excuse me.

18 THE COURT: I didn't want to interrupt if you were
19 having a conversation with Mr. Fabio.

20 MS. SCOLARI: We're all set.

21 THE COURT: All right. Now, I have before me a waiver
22 of indictment form dated August 13, 2024.

23 And, Mr. Fabio, did you sign this form?

24 MS. SCOLARI: I did, your Honor.

25 THE COURT: Is it your signature that appears here?

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1 THE DEFENDANT: Yes, your Honor.

2 THE COURT: Before you signed this waiver of
3 indictment, did you discuss it with Ms. Scolari?

4 THE DEFENDANT: I did.

5 THE COURT: Did she explain it to you?

6 THE DEFENDANT: She did, your Honor.

7 THE COURT: Do you understand you're under no
8 obligation to waive indictment?

9 THE DEFENDANT: I do.

10 THE COURT: Do you understand that if you do not waive
11 indictment and the government wants to prosecute you, it would
12 have to present the case to a grand jury, which may or may not
13 indict you?

14 THE DEFENDANT: Understood.

15 THE COURT: Do you understand that by waiving
16 indictment, you are giving up your right to have this case
17 presented to a grand jury?

18 THE DEFENDANT: Yes.

19 THE COURT: Do you understand what a grand jury is?

20 THE DEFENDANT: Yes.

21 THE COURT: Okay. I'm going to tell you anyway. It's
22 a body composed of 23 people, of which 16 must be present. You
23 cannot be charged unless 12 vote for indictment based on
24 probable cause. Okay?

25 THE DEFENDANT: Okay.

O8DDFabP

1 THE COURT: You understand you're giving up that right
2 by waiving indictment?

3 THE DEFENDANT: I do.

4 THE COURT: Okay. Do either counsel know of any
5 reason I should not find Mr. Fabio has knowingly and
6 voluntarily waived his right to be indicted by a grand jury?

7 MR. GIANFORTI: No, your Honor.

8 MS. SCOLARI: I do not, your Honor.

9 THE COURT: Okay. I find Mr. Fabio has knowingly and
10 voluntarily waived his right to be indicted by a grand jury,
11 and I authorize the filing of the information. We have the
12 waiver of indictment form, which is signed. I'll just note it
13 as Court Exhibit One.

14 All right. So the next thing we're going to take care
15 of is before, Mr. Fabio, we get into your -- the plea agreement
16 and the discussions your counsel and you have had with the
17 government, we need to have you arraigned on the information.
18 Okay? So I'm going to ask you a few questions now.

19 Have you seen a copy of the information in this case?

20 THE DEFENDANT: I have, your Honor.

21 THE COURT: Have you discussed it with Ms. Scolari?

22 THE DEFENDANT: I have.

23 THE COURT: Now, do you want me to read the
24 information out loud or summarize it for you or do you waive
25 its public reading?

O8DDFabP

1 THE DEFENDANT: I waive its public reading.

2 Thank you, your Honor.

3 THE COURT: Do you understand the charge against you?

4 THE DEFENDANT: I do.

5 THE COURT: How do you plead to the charge in the
6 information, guilty or not guilty?

7 MS. SCOLARI: I've explained it's kind of an oxymoron,
8 because he's now going to plead not guilty, and, in a minute,
9 he's going to plead guilty.

10 THE COURT: Okay. So, Mr. Fabio, you understand the
11 sequence here, before we get into the plea agreement where you
12 may, after we've had our discussion, decide that you would like
13 to plead guilty, at this point in time, before we do any of
14 that, how do you plead to the charge in the information?

15 THE DEFENDANT: Not guilty.

16 THE COURT: All right. Now, Mr. Gianforti, do we need
17 to have a 5(f) order in this case? Is this Mr. Fabio's initial
18 appearance?

19 MR. GIANFORTI: I think, in an abundance of caution,
20 it's probably worth doing it. I've done it in every other case
21 that's been circulating around this case.

22 THE COURT: Okay. So, Mr. Fabio, I understand, again,
23 I think your counsel called this an oxymoron, but I understand
24 the next thing we're going to be talking about is a plea of
25 guilty. But at this point in the case it is your right to

O8DDFabP

1 proceed on the information and to proceed to trial if you would
2 like to.

3 So, in that regard, there's a rule of criminal
4 procedure that requires me to tell the government that if they
5 have any material that's so-called *Brady* material, that might
6 be something that you and your counsel would want to see in the
7 discovery in this case, they have to turn it over. Okay?

8 So I'm going to give them that instruction. If you
9 have any questions on this, let me know, but I wanted to let
10 you know, because this is going to sound like a lot of legalese
11 but it's important I do it.

12 THE DEFENDANT: Thank you.

13 THE COURT: Let me take a moment to comply with Rule
14 5(f) of the Federal Rules of Criminal Procedure to remind the
15 government of its obligation under *Brady v. Maryland* and its
16 progeny to disclose to the defense all information, whether
17 admissible or not, that is favorable to the defendant, material
18 either to guilt or to punishment, and known to the prosecution.

19 The prosecution must make good faith efforts to
20 disclose such information to the defense as soon as reasonably
21 possible. Failure to do so may result in a number of
22 consequences, including a continuance, sanctions, dismissal, or
23 a vacatur of any conviction. I'll enter a written order
24 describing more fully these obligations and the possible
25 consequences of violating them and direct the government to

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1 review and comply with that order.

2 Mr. Gianforti, do you understand your obligations
3 under Rule 5(f) and *Brady v. Maryland*, and will you fulfill
4 them?

5 MR. GIANFORTI: I will, your Honor, and I do.

6 THE COURT: Okay. Let's proceed.

7 Ms. Scolari, does your client have an application
8 regarding a plea as to charge in the information?

9 MS. SCOLARI: Yes, your Honor. He wishes to withdraw
10 his just previous plea of not guilty and enter a plea of guilty
11 to the sole count in the superseding indictment.

12 THE COURT: Mr. Fabio, I've been informed you wish to
13 plead guilty to the sole count in the superseding information,
14 which is operating an unlicensed money transmission business
15 under 18, U.S.C., section 1960(n)(2).

16 Is that correct?

17 THE DEFENDANT: That is correct, your Honor.

18 THE COURT: Mr. Gianforti, just a technical question.
19 The plea agreement solely refers to section 6660. The
20 information refers to section 1960(n)(2). I can't understand
21 why that would be material. However, I did note that there was
22 that discrepancy between the agreement and information.

23 Is that meaningful in any way that we need to take
24 into account?

25 MR. GIANFORTI: I don't think so, your Honor. This is

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1 -- I mean, section 2 is aiding and abetting. He was -- there
2 was no co-conspirator or anything in this particular case, so I
3 think it's just an oversight that has no particular materiality
4 here.

5 THE COURT: That was what I understood. I just wanted
6 to make sure that I was understanding that correctly.

7 All right. Now, before I accept your guilty plea, I'm
8 going to ask you, Mr. Fabio, certain questions so I can
9 establish to my satisfaction that you wish to plead guilty
10 because you are guilty and not for some other reason, and also
11 to establish that you know what you will be giving up by
12 pleading guilty.

13 If you do not understand any of my questions or you
14 want to consult with Ms. Scolari at any time for any reason,
15 just let me know and I'll give you as much time as you need to
16 do that, because it is essential in order to have a valid plea
17 that you understand each question before you answer.

18 Now, you remember I asked you some questions about
19 your competence and how you were feeling and the Lexapro and
20 all that stuff, so just to be really sure, do you understand
21 what's happening in the courtroom today?

22 THE DEFENDANT: I do, your Honor.

23 THE COURT: Do you feel like any of the treatment or
24 for any reason you are not in the right state of mind to
25 understand what you'd be giving up by pleading guilty?

O8DDFabP

1 THE DEFENDANT: I understand.

2 THE COURT: You understand.

3 Ms. Scolari, have you discussed this matter with
4 Mr. Fabio?

5 MS. SCOLARI: Yes, I have, your Honor.

6 THE COURT: Does he understand the rights he would be
7 waiving by pleading guilty?

8 MS. SCOLARI: I believe he does, yes.

9 THE COURT: Is he capable of understanding the nature
10 of the proceedings?

11 MS. SCOLARI: Yes, he is.

12 THE COURT: Do either counsel have any doubt as to Mr.
13 Fabio's competence to plead at this time?

14 MR. GIANFORTI: No.

15 MS. SCOLARI: No, your Honor. Thank you.

16 THE COURT: On the basis of Mr. Fabio's responses to
17 my questions at the beginning of this proceeding, my
18 observations of his demeanor here in court and the
19 representations of counsel, I find that Mr. Fabio is fully
20 competent to enter an informed plea of guilty at this time.

21 Now, I'm going to ask you a few questions, and they're
22 going to sound repetitive, but as you might appreciate, this is
23 such an important part of this proceeding that it's better to
24 be over-inclusive as opposed to under-inclusive, so I apologize
25 in advance if I'm asking you multiple things multiple times

O8DDFabP

1 over.

2 Do you feel you have had enough of a chance to discuss
3 with Ms. Scolari the charge that you intend to plead guilty to
4 and any possible defenses to that charge?

5 THE DEFENDANT: I do, your Honor.

6 THE COURT: Has Ms. Scolari explained to you the
7 consequences of entering a plea of guilty?

8 THE DEFENDANT: She has, your Honor.

9 THE COURT: Are you satisfied with your lawyer's
10 representation?

11 THE DEFENDANT: I am.

12 THE COURT: You understand that you're still under
13 oath, and so anything you say over the course of this
14 proceeding you have to tell me the truth and the whole truth,
15 otherwise you could be subject to a charge of perjury?

16 Do you understand that?

17 THE DEFENDANT: I understand, your Honor.

18 THE COURT: All right. Now, Mr. Fabio, I'm going to
19 explain some rights that you have. These are rights that
20 you'll be giving up if you enter a guilty plea. Please listen
21 carefully to what I'm about to say, and if you do not
22 understand something, stop me and your lawyer or I will explain
23 the matter more fully.

24 Under the Constitution and the laws of the United
25 States, you have a right to plead not guilty to the charge in

O8DDFabP

1 the information.

2 Do you understand that?

3 THE DEFENDANT: I do.

4 THE COURT: If you did plead not guilty, you would be
5 entitled to a speedy and public trial by a jury on the charge
6 contained in the information.

7 Do you understand that?

8 THE DEFENDANT: I do.

9 THE COURT: At a trial, you would be presumed to be
10 innocent, and you would not have to prove that you were
11 innocent. Instead, the government would be required to prove
12 you guilty by competent evidence beyond a reasonable doubt
13 before the jury could find you guilty.

14 Do you understand that?

15 THE DEFENDANT: I do, your Honor.

16 THE COURT: In order to find you guilty, a jury of 12
17 people would have to agree unanimously that you were guilty.

18 Do you understand that?

19 THE DEFENDANT: I do, your Honor.

20 THE COURT: At that trial and at every stage of your
21 case, you would be entitled to be represented by a lawyer, and
22 if you could not afford a lawyer, one would be appointed at
23 public expense, free of cost, to represent you.

24 Do you understand that?

25 THE DEFENDANT: Yes, your Honor.

O8DDFabP

1 THE COURT: During a trial, the witnesses for the
2 government would have to come to court and testify in your
3 presence. Your lawyer could cross-examine the witnesses for
4 the government, object to evidence offered by the government,
5 and offer evidence on your own behalf if you so desire, and you
6 would have the right to have subpoenas issued or other process
7 used to compel witnesses to testify in your defense.

8 Do you understand that?

9 THE DEFENDANT: I do.

10 THE COURT: At a trial, although you would have the
11 right to testify if you chose to do so, you would also have the
12 right not to testify, and if you decided not to testify, no
13 one, including the jury, could draw any inference or suggestion
14 of guilt from the fact that you did not testify.

15 Do you understand that?

16 THE DEFENDANT: I do, your Honor.

17 THE COURT: Before trial, you would have an
18 opportunity, if you have not waived it, to seek suppression of
19 some or all of the evidence the government may use against you
20 at trial on the ground that your Constitutional rights were
21 violated.

22 Do you understand that?

23 THE DEFENDANT: Yes.

24 THE COURT: There's no basis for any kind of waiver of
25 any suppression rights at this juncture, Ms. Scolari, right?

O8DDFabP

1 MS. SCOLARI: No, your Honor.

2 THE COURT: So just to be clear, if you wanted to, you
3 could try to suppress the government's evidence that they might
4 use against you at trial on the ground that your rights were
5 violated.

6 Do you understand that?

7 THE DEFENDANT: Yes.

8 THE COURT: You understand you'll be giving up that
9 right if you plead guilty?

10 THE DEFENDANT: Yes, your Honor.

11 THE COURT: All right. Before trial, the government
12 is required to produce discovery materials to you under Federal
13 Rule of Criminal Procedure 16, and would further be required to
14 produce material pursuant to *Brady v. Maryland* and Federal Rule
15 of Criminal Procedure 5(f), and impeachment material pursuant
16 to *Giglio v. United States*, and so-called Jencks Act material.

17 Do you have any questions about what that material
18 would be that you'd be giving up the right to see if you plead
19 guilty?

20 THE DEFENDANT: No questions, your Honor, about that.

21 THE COURT: Now, if you were convicted at a trial, you
22 would have the right to appeal that verdict and any pretrial
23 ruling that I have made.

24 Do you understand that?

25 THE DEFENDANT: Yes, your Honor.

O8DDFabP

1 THE COURT: If you plead guilty, you'll have to give
2 up your right not to incriminate yourself, because I may ask
3 you questions about what you did in order to satisfy myself
4 that you are guilty as charged, and you will have to admit and
5 acknowledge your guilt.

6 Do you understand that?

7 THE DEFENDANT: Yes, your Honor.

8 THE COURT: If you plead guilty and if I accept your
9 plea, you'll give up your right to a trial and the other rights
10 I have just discussed other than the right to a lawyer, which
11 you have regardless of whether or not you plead guilty. But
12 there will be no trial and I will enter a judgment of guilty
13 and sentence you on the basis of your plea after I have
14 considered a presentence report and whatever submissions I get
15 from your lawyer and the government.

16 There will be no appeal with respect to whether the
17 government could use the evidence it has against you or with
18 respect to whether you did or did not commit this crime.

19 That was a lot, but do you understand that?

20 THE DEFENDANT: Yes, your Honor.

21 THE COURT: All right. Now, even now as you're
22 entering this plea, you have a right to change your mind and
23 plead not guilty and go to trial on the charge contained in the
24 information.

25 Do you understand that?

O8DDFabP

1 THE DEFENDANT: Yes, your Honor.

2 THE COURT: Do you understand each and every one of
3 the rights that I've explained to you?

4 THE DEFENDANT: Yes, your Honor.

5 THE COURT: Mr. Fabio, are you willing to give up your
6 right to a trial and the other rights I've just discussed with
7 you?

8 THE DEFENDANT: Yes, your Honor.

9 THE COURT: All right. Now we'll talk a little bit
10 about the nature of the charge and potential consequences.

11 Mr. Fabio, you understand your plea relates to the
12 operation of an unlicensed money transmission business in
13 violation of 18, U.S.C., section 1960(n)(2)?

14 Do you understand that?

15 THE DEFENDANT: I do, your Honor.

16 THE COURT: All right. Mr. Gianforti, would you
17 please state the elements of the offense in question?

18 MR. GIANFORTI: Yes, your Honor.

19 In order to sustain its burden of proof with respect
20 to Count One, the information, the government would have to
21 prove the following elements beyond a reasonable doubt:

22 First, that the business in question was an unlicensed
23 money transmitting business;

24 Second, that the business was controlled, conducted,
25 managed, supervised, directed, or owned with knowledge that it

O8DDFabP

1 was used as a unlicensed money transmitting business;

2 And, third, that the operation of the unlicensed money
3 transmission business affected interstate or foreign commerce.

4 And the government would have to prove venue to a
5 preponderance of the evidence.

6 THE COURT: All right. Mr. Fabio, do you understand
7 that if you were to go to trial, the government would have to
8 prove all of those elements beyond a reasonable doubt and
9 venue, which you just heard Mr. Gianforti mention that they
10 would have to prove by a preponderance of the evidence?

11 Do you understand that?

12 THE DEFENDANT: I understand, your Honor.

13 THE COURT: Now I'm going to tell you the maximum
14 possible penalty for the crime that is the subject of the
15 information. The maximum means the most that could possibly be
16 imposed. It does not mean that it is what you will necessarily
17 receive. But you have to understand that by pleading guilty,
18 you are exposing yourself to the possibility of receiving any
19 combination of punishments up to the maximum that I'm about to
20 describe.

21 Do you understand that?

22 THE DEFENDANT: Yes, your Honor.

23 THE COURT: All right. First I'm going to tell you
24 about possible restrictions on your liberty. The maximum term
25 of imprisonment for this crime is five years, and that could be

O8DDFabP

1 followed by a maximum term of supervised release of three
2 years.

3 Do you understand that?

4 THE DEFENDANT: Yes, your Honor.

5 THE COURT: Now, supervised release means you'll be
6 subject to supervision by the probation department. There will
7 be rules of supervised release that you will have to follow,
8 and if you violate those rules, you can be returned to prison
9 without a jury trial to serve additional time, with no credit
10 for time you served in prison as a result of your sentence and
11 no credit for time served on post-release supervision.

12 Do you understand that?

13 THE DEFENDANT: Yes, your Honor.

14 THE COURT: You should understand there is no parole
15 in the federal system, and if you are sentenced to prison, you
16 will not be released early on parole. There is limited credit
17 for good behavior, but you have to serve at least 85 percent of
18 the time that you are sentenced to.

19 Do you understand that?

20 THE DEFENDANT: Yes, your Honor.

21 THE COURT: In addition to these restrictions on your
22 liberty, the maximum possible punishment also includes some
23 financial penalties: The maximum allowable fine, the greater
24 of \$250,000 or twice the gross pecuniary gain derived from the
25 offense or twice the gross pecuniary loss to persons other than

O8DDFabP

1 you resulting from the offense.

2 Do you understand that?

3 THE DEFENDANT: That one might need a little more
4 extrapolation on it, please.

5 THE COURT: Okay. So there's a fine associated with
6 this crime.

7 Do you understand that?

8 THE DEFENDANT: Yes.

9 THE COURT: The maximum fine is the greatest of one of
10 these, okay? The greatest of \$250,000, twice the gross
11 pecuniary gain derived from the offense, or twice the gross
12 pecuniary loss to persons other than you resulting from the
13 offense. So you've got \$250,000, you've got twice the gross
14 pecuniary gain, like the monetary gain from the offense, and
15 then twice the gross pecuniary -- the kind of monetary loss to
16 people other than you from the offense.

17 THE DEFENDANT: Understood.

18 THE COURT: That's the maximum possible fine.

19 You understand that?

20 THE DEFENDANT: Understood. Thank you.

21 THE COURT: Okay. Any further -- you want to talk to
22 Ms. Scolari about that or anything?

23 THE DEFENDANT: No.

24 THE COURT: Okay. Now, in addition, I can order
25 restitution to any person or entity injured as a result of your

O8DDFabP

1 criminal conduct.

2 Mr. Gianforti, is there any basis for restitution in
3 this case or any attempt --

4 MR. GIANFORTI: There's not.

5 THE COURT: There is not. Okay.

6 There is a forfeiture, which we'll address, and I
7 understand the parties have an agreement relating to
8 forfeiture.

9 Is that right, Mr. Gianforti?

10 MR. GIANFORTI: Yes, your Honor.

11 THE COURT: All right. We will address that when we
12 get to the plea.

13 There is also a mandatory special assessment of \$100.

14 Do you understand that?

15 THE DEFENDANT: Yes, your Honor.

16 THE COURT: All right. Do you understand that these
17 are the maximum possible penalties?

18 THE DEFENDANT: Yes, your Honor.

19 THE COURT: Are you a United States citizen?

20 THE DEFENDANT: I am.

21 THE COURT: Do you understand that, as a result of
22 your guilty plea, you may lose certain valuable civil rights to
23 the extent that you have them or could otherwise obtain them
24 now, such as the right to vote, the right to hold public
25 office, the right to serve on a jury, and the right to possess

O8DDFabP

1 any kind of firearm?

2 THE DEFENDANT: Understood, your Honor.

3 THE COURT: Now, are there any other cases or
4 sentences here, Mr. Gianforti, related to Mr. Fabio?

5 MR. GIANFORTI: There are, your Honor. There are five
6 defendants that were originally charged, five different flight
7 attendants engaged in the same conduct. Those have all been --
8 with the exception of one, they've all been wheeled to
9 different district judges. No one's sentenced.

10 THE COURT: But Mr. Fabio is not a defendant in these
11 other cases?

12 MR. GIANFORTI: He's not, no.

13 THE COURT: All right. Mr. Fabio, are you serving any
14 other sentence, state or federal, or being prosecuted in state
15 court for any crime?

16 THE DEFENDANT: No, your Honor.

17 THE COURT: Okay. Are you being prosecuted in federal
18 court for any crime other than this case?

19 THE DEFENDANT: No, your Honor.

20 THE COURT: Now I'm just going to tell you this
21 anyway, but if you were, you should understand that your state
22 and federal sentences -- if that situation came up, could be
23 consecutive to any sentence imposed in this case, could be
24 added onto any sentence served. I'm just telling you that, but
25 it appears that that's not an issue for you. But I wanted to

O8DDFabP

1 let you know so you are aware of it in case there's something
2 you forgot or that's something that just didn't come up. Okay?

3 THE DEFENDANT: Thank you.

4 THE COURT: Do you understand, if your lawyer or
5 anyone else has attempted to predict what your sentence will
6 be, that their prediction could be wrong? No one, not your
7 lawyer, not the government's lawyer, no one can give you any
8 assurance of what your sentence will be, since I am going to
9 decide your sentence and I am not going to do that now. I am
10 going to wait until I receive a presentence report -- you
11 probably talked to your lawyer about this -- prepared by the
12 probation department; do my own independent calculation of the
13 guidelines range; consider any possible departures from it; and
14 also determine what a reasonable sentence is for you based on
15 the sentencing factors contained in that statute, 18, U.S.C.,
16 3553(a). It has a long list of things that I need to consider
17 when I'm sentencing someone.

18 Do you understand all that?

19 THE DEFENDANT: Yes, your Honor.

20 THE COURT: Okay. So, bottom line, even if
21 Ms. Scolari, even if Mr. Gianforti may expect what the sentence
22 would be, that doesn't matter, because I'm going to be
23 sentencing you based on the legal factors that I have to apply.

24 Do you understand that?

25 THE DEFENDANT: Yes, your Honor.

O8DDFabP

1 THE COURT: All right. I'll say it one more time just
2 to make sure it's clear. Even if your sentence is different
3 from what lawyer or anyone else has told you it might be, even
4 if it's from what you might expect or from what is contained in
5 the written plea agreement, which we'll talk about in a second,
6 you will still be bound by your guilty plea and will not be
7 allowed to withdraw your plea of guilty.

8 Do you understand that?

9 THE DEFENDANT: Yes, your Honor.

10 THE COURT: All right. Now, I understand there is a
11 written plea of guilty entered between you and your lawyer and
12 the lawyer for the government; is that right?

13 MS. SCOLARI: A plea agreement, your Honor.

14 THE COURT: Did I say -- I'm sorry if I misspoke. A
15 written plea agreement. Yes.

16 Now, do we have a written, executed copy of that?

17 MR. GIANFORTI: We do, your Honor. It's with your
18 deputy.

19 THE COURT: Now, Mr. Gianforti, I understand that the
20 previous plea agreement that the Court had is different from
21 this version, and the only difference is in the amount of
22 forfeiture; is that correct?

23 MR. GIANFORTI: That's right.

24 THE COURT: Okay. So I have before me a plea
25 agreement dated August 13, 2024.

O8DDFabP

1 Mr. Fabio, did you sign this agreement on the last
2 page?

3 THE DEFENDANT: I did, your Honor.

4 THE COURT: Did you do that in the presence of your
5 lawyer?

6 THE DEFENDANT: I did, your Honor.

7 THE COURT: Did you read this agreement before you
8 signed it?

9 THE DEFENDANT: I did, your Honor. Thank you.

10 THE COURT: Did you discuss this agreement with your
11 lawyer before you signed it?

12 THE DEFENDANT: I did.

13 THE COURT: Did you fully understand the agreement
14 before you signed it?

15 THE DEFENDANT: Yes, your Honor.

16 THE COURT: One of the features of your agreement with
17 the government is you have agreed on the guideline range that
18 applies in this case.

19 Do you understand that?

20 THE DEFENDANT: I do.

21 THE COURT: That agreement is binding on you and
22 binding on the government, but not binding on me.

23 Do you understand that?

24 Let's make sure you understand that. You get it? You
25 got me?

O8DDFabP

1 THE DEFENDANT: Yes, your Honor.

2 THE COURT: All right. I have my own obligation to
3 determine the correct guidelines range and what the appropriate
4 sentence is in your case. I'm not saying I will come up with
5 any range different from the one you agreed to with the
6 government, but if I do, then I will not let you withdraw your
7 plea even if the range I determined is higher than the one to
8 which you agree.

9 Do you understand that?

10 THE DEFENDANT: I do, your Honor.

11 THE COURT: Another feature of your agreement is that
12 you admit to a forfeiture allegation in the information and
13 agree to forfeit to the United States the proceedings traceable
14 to the offense; is that correct?

15 THE DEFENDANT: That's correct.

16 THE COURT: You understand what that means?

17 THE DEFENDANT: Yes.

18 THE COURT: At this time, do I have a copy of the
19 forfeiture order?

20 MR. GIANFORTI: You do, your Honor.

21 THE COURT: All right. I have in front of me a
22 consent preliminary order of forfeiture/money judgment dated
23 August 13, 2024.

24 Mr. Fabio, you understand, consistent with this order
25 and judgment, you would be forfeiting to the government a sum

O8DDFabP

1 of money equal to 20 -- \$2,100 in United States currency
2 representing property involved in the offense charged in Count
3 One of the information?

4 MR. GIANFORTI: Your Honor, it should be \$2,100 I
5 think.

6 THE COURT: Sorry. Did I again misspeak? It's late
7 in the day. Let me say that again.

8 You understand, Mr. Fabio, you would be forfeiting a
9 sum of money equal to \$2,100 in United States currency,
10 representing property involved in the offense charged in Count
11 One of the information?

12 THE DEFENDANT: I do, your Honor.

13 THE COURT: Okay. Mr. Gianforti, are there any other
14 principal terms of the order and judgment that we would want to
15 make sure that Mr. Fabio is aware of?

16 MR. GIANFORTI: No, not with respect to the forfeiture
17 order.

18 THE COURT: All right. Just for the record, I'll just
19 note the plea agreement as Court Exhibit Two and the
20 preliminary order and judgment will be entered at the
21 conclusion of these proceedings.

22 Now, does the written plea agreement, Mr. Fabio,
23 constitute your complete and total understanding of the entire
24 agreement between you and the government?

25 THE DEFENDANT: Yes, your Honor.

O8DDFabP

1 THE COURT: Has anything been left out? Do you feel
2 like there's something you talked about but it's not in the
3 writing in the actual agreement?

4 THE DEFENDANT: No, your Honor.

5 THE COURT: Other than what is written in the
6 agreement, has anyone made any promise or offered you any
7 inducement to plead guilty or to sign the agreement?

8 THE DEFENDANT: No, your Honor.

9 THE COURT: Has anyone threatened you or forced you to
10 plead guilty or to sign the plea agreement?

11 THE DEFENDANT: No, your Honor.

12 THE COURT: Has anyone made a promise to you as to
13 what your sentence will be?

14 THE DEFENDANT: No.

15 THE COURT: Okay. Now I'm going to ask you about the
16 factual basis for your guilty plea. I realize there's one
17 thing that I neglected to do, which I will do this.

18 One of the features of your plea agreement, which I
19 wanted to make sure to review with you, is you understand that
20 there is a waiver on your part of a right to appeal under
21 certain circumstances.

22 Do you understand that?

23 THE DEFENDANT: Yes, your Honor.

24 THE COURT: Okay. You understand that you are giving
25 up the right to appeal any sentence, which is within or below

O8DDFabP

1 the stipulated guidelines range of 18 to 24 months of
2 imprisonment.

3 Do you understand that?

4 THE DEFENDANT: I do, your Honor.

5 THE COURT: Okay. You further agree not to appeal or
6 bring a collateral challenge to any term of supervised release
7 that is less than or equal to the statutory maximum or any
8 condition of supervised release imposed by the Court for which
9 you had notice, including from a recommendation by the
10 probation office in the presentence report, and an opportunity
11 to object.

12 Do you understand that?

13 THE DEFENDANT: Yes, your Honor.

14 THE COURT: Okay. When I say appeal, that would
15 include what's called a collateral challenge under a statute
16 called 28, U.S.C., 2255. So it's not just kind of the appeal
17 from the case. It also includes this other type of way of
18 challenging it. Both of those you're going to be prevented
19 from doing if your sentence is below 18 -- within or below 18
20 to 24 months of imprisonment and at or below the statutory
21 maximum for supervised release.

22 Do you understand that?

23 THE DEFENDANT: Yes, your Honor.

24 THE COURT: Now, you also agree not to appeal or bring
25 any collateral challenge of any forfeiture amount that is less

O8DDFabP

1 than or equal to 20 -- \$2,100 or any fine that is less than or
2 equal to \$75,000.

3 Do you understand that?

4 THE DEFENDANT: Yes, your Honor.

5 THE COURT: You also agree not to appeal or bring a
6 collateral challenge to any special assessment that is less
7 than or equal to \$100.

8 Do you understand that?

9 THE DEFENDANT: Yes.

10 THE COURT: Okay. Now I'm going to ask you some
11 questions about the factual basis for your guilty plea, and
12 before I do so, just because of my referring to \$2,100 as
13 \$21,000 incorrectly before, Mr. Gianforti, is there anything
14 else that we need to review with respect to the plea agreement?

15 MR. GIANFORTI: No, your Honor.

16 THE COURT: Ms. Scolari, you agree?

17 MS. SCOLARI: Yes, I agree.

18 THE COURT: Okay. So, Mr. Fabio, now tell me in your
19 own words -- I'm going to ask you about the offense and just
20 why you are pleading guilty just to make sure that you are
21 pleading guilty because you are, in fact, guilty. So could you
22 tell me in your own words what you did that makes you believe
23 that you are guilty of the charge in the information?

24 THE DEFENDANT: Yes, your Honor. Between the year
25 2017 and 2023, I operated an unlicensed money transfer

O8DDFabP

1 business. I transported cash from New York to the Dominican
2 Republic on May 17th, 2023, for a fee. I did not have a
3 license -- so I transported cash from New York to the Dominican
4 Republic on May 17, 2023, for a fee.

5 THE COURT: Did you say for a fee?

6 THE DEFENDANT: For a fee.

7 THE COURT: Ms. Scolari, could you move that
8 microphone to put it in front of Mr. Fabio?

9 THE DEFENDANT: Hopefully this will be better. My
10 apologies.

11 THE COURT: That's much better.

12 THE DEFENDANT: I did not have a license to operate a
13 money transfer business. I acknowledge that it was wrong and
14 illegal for me to transport the cash.

15 THE COURT: I understand you were reading from a
16 statement. Is that a statement that your counsel prepared, or
17 did you prepare it?

18 THE DEFENDANT: I prepared it, and I organized my
19 thoughts that way.

20 THE COURT: Thank you.

21 When you did those things, did you know what you were
22 doing was wrong and illegal?

23 THE DEFENDANT: Yes.

24 THE COURT: Ms. Scolari, do you know of any valid
25 defense that would prevail at trial?

O8DDFabP

1 MS. SCOLARI: I do not, your Honor.

2 THE COURT: Do you know of any other reason your
3 client should not be permitted to plead guilty?

4 MS. SCOLARI: I do not.

5 THE COURT: Mr. Gianforti, are there any additional
6 questions you want me to ask of the defendant?

7 MR. GIANFORTI: No, your Honor.

8 I will note for the record that one of the money
9 transfers in this case was in Manhattan, which would establish
10 venue here.

11 THE COURT: I was going to ask you to summarize
12 government's evidence and anything else that you would like to
13 add in terms of a summary of the evidence that would be
14 presented at trial.

15 MR. GIANFORTI: So the evidence at trial would consist
16 principally of testimony from two different cooperating
17 witnesses, some law enforcement testimony, recordings of the
18 cash and offense referenced in the underlying complaint here,
19 as well as text messages exchanged between one of the
20 cooperates and Mr. Fabio.

21 THE COURT: Thank you very much.

22 Do both counsel agree that there's a sufficient
23 factual predicate for a guilty plea?

24 MR. GIANFORTI: Yes.

25 MS. SCOLARI: Yes, your Honor.

O8DDFabP

1 THE COURT: Do either counsel know of any reason that
2 I should not accept the defendant's plea of guilty?

3 MR. GIANFORTI: No, your Honor.

4 MS. SCOLARI: No, your Honor.

5 THE COURT: Mr. Fabio, because you've acknowledged
6 that you are, in fact, guilty as charged in the information,
7 because I am satisfied you know of your rights, including your
8 right to go to trial, and that you are aware of the
9 consequences of your plea, including the sentence which may be
10 imposed, and because I find that you are knowingly and
11 voluntarily pleading guilty, I accept your guilty plea and
12 enter a judgment of guilty on Count One of the information,
13 operation of an unlicensed money transmission business in
14 violation of 18, U.S.C., section 1960(n)(2).

15 Now, the Probation Department is going to want to
16 interview you in connection with the presentence report. If
17 you choose to speak with the Probation Department, just, again,
18 make sure everything you say is accurate and truthful. I'll
19 read the report very carefully, and it is important to me in
20 deciding what sentence to impose.

21 You and your counsel have a right to examine the
22 report and comment on it at the time of sentencing, so read it
23 and discuss it with your lawyer before sentencing. If there
24 are mistakes in it, point them out. Don't hesitate, because
25 then we can get everything fixed before it will come to my

O8DDFabP

1 attention.

2 Now, I will order that, Ms. Scolari, you be present
3 for any interview in connection with that report, unless
4 there's any reason for that not to happen.

5 MS. SCOLARI: That's correct, I would like to be
6 present.

7 THE COURT: Okay. Let's set -- well, is there any
8 reason why this case cannot be put down for sentencing -- I'm
9 looking at a date of November 15 at 2:00 p.m., but is there any
10 reason why we shouldn't proceed on that kind of schedule?

11 MR. GIANFORTI: Not from the government's perspective.
12 I'll check the exact date.

13 THE COURT: Friday, November 15, 2:00 p.m.

14 MS. SCOLARI: That's fine with me at this point.
15 Thank you.

16 MR. GIANFORTI: That's fine, your Honor. Thank you.

17 THE COURT: Okay. I'll direct the government to
18 provide the probation officer with its factual statement within
19 seven days.

20 Defense counsel must arrange for the defendant to be
21 interviewed by the Probation Department within the next two
22 weeks.

23 Are there any further issues, Mr. Gianforti, for us to
24 discuss?

25 MR. GIANFORTI: No, your Honor.

O8DDFabP

1 THE COURT: Mr. Fabio is presently on bail?

2 MR. GIANFORTI: That's right.

3 THE COURT: Any objection to those conditions being
4 continued?

5 MR. GIANFORTI: No, but I believe Ms. Scolari has an
6 application in that regard.

7 THE COURT: Okay.

8 MS. SCOLARI: I do have a request that the Court
9 permit Mr. Fabio's travel to be extended to cover the State of
10 New Jersey. The government has no objection. He has very
11 close friends who are like family there, and he'd like to be
12 able to visit.

13 THE COURT: There is no issue with that. Would you
14 like to put in a written application?

15 MS. SCOLARI: I can do that.

16 THE COURT: You can put it in a letter, and then I'll
17 so order that. That way the probation office has that.

18 MS. SCOLARI: Thank you.

19 THE COURT: All right. So I think that takes care of
20 everything we need to take care of.

21 Mr. Gianforti, anything else?

22 MR. GIANFORTI: No, your Honor.

23 THE COURT: Ms. Scolari?

24 MS. SCOLARI: No, your Honor. Thank you.

25 THE COURT: Okay. I did have one question, and you

O8DDFabP

1 may have seen me pause in the middle of the case, but I
2 understand you mentioned that there were five cases and the
3 cases had been assigned to different judges.

4 Do you understand what the reason for that is?

5 MR. GIANFORTI: So, your Honor, there's not an
6 overarching conspiracy I think is the issue. So one of the
7 cooperators was a money launderer for drug dealers here in New
8 York. He had many different flight attendants that were aiding
9 in his money laundering operation. They were all sort of
10 separately siloed individuals.

11 Some of them knew each other. I did charge a
12 conspiracy with respect to a couple of the other defendants in
13 this case, but ultimately each person was sort of unto
14 themselves. There wasn't a need to consolidate them all under
15 one district judge, so they've all been wheeled out to
16 different judges.

17 THE COURT: Okay. I understand that. You can
18 appreciate the reason for my question is that it seems odd to
19 have five cases that are related in certain ways, as it I think
20 seems that these five cases are --

21 MR. GIANFORTI: Right.

22 THE COURT: -- proceeding before five different judges
23 --

24 MR. GIANFORTI: Right.

25 THE COURT: -- which has the potential for lack of

O8DDFabP

1 efficiency, potential unfairness, just the differences that
2 come with five different decision makers working on the cases.

3 MR. GIANFORTI: Sure.

4 THE COURT: So I just wanted to get an understanding
5 of what the basis is for that. I understand that. So thank
6 you very much.

7 MR. GIANFORTI: You're welcome.

8 THE COURT: Ms. Scolari, anything else from your end?

9 MS. SCOLARI: No, your Honor. Thank you. But I do
10 appreciate the Court's interest in understanding why this
11 happened.

12 THE COURT: Okay. Look, if there are any applications
13 along these lines for -- I guess they can be sent to any or all
14 of the judges on these cases, then you can send those
15 applications in. I'll continue to think about this on my end
16 as well.

17 All right. Well, thank you very much. I really
18 appreciate it.

19 Thank you very much, Mr. Fabio.

20 Thank you to the parties.

21 We are adjourned.

22 (Adjourned)
23
24
25